

*a***MAJLIS PEGUAM****v.****SUNIL SINGH GILL***b***COURT OF APPEAL, KUALA LUMPUR****GOPAL SRI RAM JCA****ABDUL KADIR SULAIMAN JCA****ARIFIN ZAKARIA JCA****[CIVIL APPEAL NO: W-02-732-1996]****26 SEPTEMBER 2002***c*

LEGAL PROFESSION: *Admission - Qualification for pupillage - Period of pupillage served with pupil master in Labuan - Whether pupil master an advocate and solicitor who is and has been in active practice in Malaysia - Legal Profession Act 1976, s. 13(1)*

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The respondent, a Malaysian who had studied and practiced law in Singapore sought to be admitted into the Malaysian bar. He read in the chambers of a pupil master, one Mr George Pathmanathan, in the Federal Territory of Labuan. It was not disputed that the pupil master was an advocate and solicitor admitted and enrolled under the provisions of the Legal Profession Act 1976 ('the Act') and had a practising certificate at all times. The respondent then presented his petition for admission before the High Court of Malaya and the appellant granted him 1 1/2 months shortening of his period of pupillage by taking into account his experience in Singapore. However, when the respondent's petition came up for hearing the appellant objected to the petition. The High Court overruled the objection and admitted and enrolled the respondent. Hence, the appellant's appeal herein. It was argued that the pupil master did not fall within the words "an advocate and solicitor who is and has been in active practice in Malaysia" as stipulated in s. 13(1) of the Act.

*e**f**g***Held (dismissing the appeal)****Per Gopal Sri Ram JCA delivering the judgment of the court:***h**i*

[1] The island of Labuan has always formed a part of the State of Sabah before it was excised from Sabah's geographic boundaries to become a Federal Territory. But it remained and remains as part of Malaysia. So far as political delineation in accordance with constitutional provisions is concerned, Malaysia is now made up of the states in the peninsular, Sabah, Sarawak as well as the federal territories of Kuala Lumpur, Labuan and Putrajaya. Applying the ordinary canons of construction to s. 13(1) of the Act and taking into account the background set out above, the question

whether Mr. George Pathmanathan was an advocate and solicitor who is and has been in active practice in Malaysia must be answered in the affirmative. He was, at the material time, an advocate and solicitor. Equally he had an active practice in Malaysia, namely in the Federal Territory of Labuan. The case of *Samantha Murthi v. Attorney General Malaysia & Ors* followed. (pp 19 e-h & 20 a)

[Bahasa Malaysia Translation Of Headnotes]

Responden, seorang rakyat Malaysia yang belajar dan beramal undang-undang di Singapura, telah memohon untuk diterimamasuk sebagai seorang peguam di Malaysia. Beliau menjadi pelatih di kamar seorang pengajar pelatih, iaitu En. George Pathmanathan, di Wilayah Persekutuan Labuan. Tidak dinafikan bahawa pengajar pelatih berkenaan merupakan seorang peguambela dan peguamcara yang telah diterimamasuk dan disenaraikan di bawah peruntukan-peruntukan Akta Profesion Guaman 1976 ('Akta') dan memiliki sijil amalan pada setiap waktu. Responden kemudian memfailkan petisyen untuk diterimamasuk di hadapan Mahkamah Tinggi Malaya dan perayu memberikannya 1½ bulan pengurangan tempoh pelatihan setelah mengambilkira pengalamannya di Singapura. Tetapi, sewaktu pendengaran petisyen responden, perayu telah membantah petisyen tersebut. Mahkamah Tinggi bagaimanapun menolak bantahan dan telah menerimamasuk dan menyenaraikan responden. Perayu merayu dan berhujah bahawa pengajar pelatih di sini tidak dirangkumi oleh perkataan "seorang peguambela dan peguamcara yang sedang dan telah beramal secara aktif di Malaysia" seperti yang diperuntukkan dalam s. 13(1) Akta.

Diputuskan (menolak rayuan)

Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

[1] Pulau Labuan senentiasa menjadi sebahagian dari Negeri Sabah sebelum ianya dipisahkan dari sempadan negeri tersebut untuk dijadikan sebuah Wilayah Persekutuan. Apa pun, ia masih dan terus menjadi sebahagian dari Malaysia. Berdasarkan pengubahan garisan politik yang diasaskan kepada peruntukan-peruntukan perlembagaan, Malaysia kini terdiri dari negeri-negeri di semenanjung, Sabah dan Sarawak serta wilayah-wilayah persekutuan Kuala Lumpur, Labuan dan Putrajaya. Dengan memakai kaedah pentafsiran biasa kepada s. 13(1) Akta dan mengambilkira latarbelakang yang dikatakan di atas, persoalan sama ada En. George Pathmanathan merupakan seorang peguambela dan peguamcara yang sedang dan telah beramal secara aktif di Malaysia haruslah dijawab secara afirmatif. Beliau sememangnya, pada

- a* waktu material, seorang peguambela dan peguamcara. Begitu juga, beliau mempunyai amalan yang aktif di Malaysia, iaitu di dalam Wilayah Persekutuan Labuan. Kes *Samantha Murthi v. Attorney General Malaysia & Ors* adalah diikuti.

- b* **Case(s) referred to:**
Malaysian Bar v. Mutang Tagal [1985] 1 MLJ 231 (*dist*)
Samantha Murthi v. Attorney General Malaysia & Ors [1982] CLJ 241; [1982] CLJ (Rep) 213 FC (*fol*)

- Legislation referred to:**
Legal Profession Act 1976, s. 13(1)
- c* For the appellant - *Hj Sulaiman Abdullah (Anita Sockalingam); M/s Zain & Co Respondent in person; M/s David Chong & Co*
For the AG Chambers - *Abdul Aziz Rahim*
- d* [Appeal from High Court, Kuala Lumpur; No: 18-986-95]
Reported by *Usha Thiagarajah*

JUDGMENT
(Oral)

- e* **Gopal Sri Ram JCA:**
This is the judgment of the court.

- f* The respondent before us is a Malaysian citizen. In 1993 he graduated from the National University of Singapore. He obtained an LLB Honours. He stayed on in Singapore. He read in Chambers there. After completing his pupillage he was called to the Singapore Bar. He practised in Singapore for approximately nineteen months. Thereafter he returned home to Malaysia. He wanted to have himself called, admitted and enrolled as an advocate and solicitor of these courts. He sought and found a pupil master, Mr. George Pathmanathan. Mr. Pathmanathan is an advocate and solicitor admitted and enrolled under the provisions of the Legal Profession Act 1976 ("the Act"). Mr. Pathmanathan had, we have been advised from the Bar by learned counsel appearing for the appellant, a current practising certificate at all times material to this appeal. In other words he could appear and plead any case at any level before any of the Courts of Semenanjung Malaysia. Now, Mr. Pathmanathan also has a practice on the island of Labuan. It is in his Chambers there that the respondent attended as a pupil. In due course the respondent presented his petition for admission before the High Court of Malaya. The appellant granted him 1 1/2 months shortening of his period of pupillage by taking into account his experience in Singapore. But when the respondent's petition for admission came
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on for hearing the appellant objected. The learned judge who heard the petition overruled the objection. He admitted and enrolled the respondent. He gave a number of reasons and made a number of observations in the course of his judgment. Principally, he held that the respondent's pupillage came within the terms of s. 13(1) of the Act. That section reads as follows:

Subject to subsection (4) a pupil shall serve his period of pupillage with an advocate and solicitor who is and has been in active practice in Malaysia for a total period of not less than seven years immediately preceding the date of commencement of his pupillage ...

The critical words in the foregoing provision for the purposes of the present appeal are "an advocate and solicitor who is and has been in active practice in Malaysia". Learned counsel for the appellant, Tuan Haji Sulaiman Abdullah, has addressed a very carefully formulated argument in which he contends that Mr. George Pathmanathan does not fall within the above-quoted words of s. 13(1). He has with his customary ability drawn our attention to several sections in the Constitution (Amendment) (No. 2) Act 1984. For reasons which will become apparent in a moment we find it unnecessary to reproduce or comment upon any of the above provisions. But we must address some of the background which has been very usefully set out for us by counsel for the appellant.

Historically, the island of Labuan has always formed part of what is now known as the State of Sabah (formerly known as British North Borneo and later as North Borneo). In 1984 Sabah excised Labuan from its geographic boundaries identified by the measurements appearing in the Constitution (Amendment) (No. 2) Act 1984. Labuan thereafter became a Federal Territory. But it remained and remains as part of Malaysia. So, as far as political delineation in accordance with constitutional provisions is concerned Malaysia is now made up of the several states in Semenanjung Malaysia, the States of Sabah and Sarawak in East Malaysia as well as the Federal Territories of Kuala Lumpur, Labuan and most recently, Putrajaya.

Applying the ordinary canons of construction to s. 13(1) and taking into account the background we have just set out the answer to the question: Was Mr. George Pathmanathan an advocate and solicitor who is and has been in active practice in Malaysia? must be in the affirmative. At the risk of repetition, he was at the material time an advocate and solicitor. Equally, he had an active practice in Malaysia, namely in the Federal Territory of Labuan.

- a** The facts of the present case in our view are abundantly covered by authority that is plainly binding on us. We refer, of course, to the decision of the former Federal Court in *Samantha Murthi v. Attorney General Malaysia & Ors* [1982] CLJ 241; [1982] CLJ (Rep) 213. In that case Mr. Samantha Murthi had read in the chambers of Mr. K.C.I. Reddy in Kuching, Sarawak. Mr. Reddy had
- b** been admitted to practice as an advocate and solicitor in the High Court of Malaya. He practised for some time before these courts. Later he migrated to Sarawak where he commenced and continued his practice. Mr. Samantha Murthi's petition for admission and enrollment was dismissed by the High Court on the ground that he had not satisfied the requirements of s. 13(1). He
- c** appealed. A particularly strong Federal Court (Suffian LP, Raja Azlan Shah CJ (Malaya) and Salleh Abas FJ) reversed. That court held that Mr. K.C.I. Reddy came within the phrase we have extracted from section 13(1) earlier in this judgment. The following passage in the judgment of Suffian LP is worthy of quotation:
- d** It is clear that the intention of the legislature when making these two amendments is to treat Sabah and Sarawak and Malaya as one country for the purpose of pupillage, while maintaining the separateness of the Bars of the three areas.
- e** In our judgment the legislature must be regarded as manifesting the same intention when choosing the word Malaysia in section 13(1) of the Legal Profession Act.
- f** The learned Judges who considered this section in the High Court were of the view that Mr. Reddy must be not only an advocate and solicitor under section 3 which he is, but he must also be one who is in possession of a practising certificate of Malaya; and that otherwise he cannot accept a pupil intending to be admitted to the Malayan Bar. With respect we do not agree.
- g** What is in dispute in this case is the meaning which we should give to the phrase 'active practice in Malaysia' in section 13(1). As earlier stated, that section provides that "a pupil shall serve his period of pupillage with an advocate and solicitor who is or has been in active practice in Malaysia etc.' Thus there are two requirements: First, the master must be
- (1) 'an advocate and solicitor' within the meaning of section 3 of the Act; and
- h** (2) he 'is or has been in active practice in Malaysia'.
- The learned Judges in the High Court ruled that Mr. Reddy is not an advocate and solicitor under section 3 because he does not hold a practising certificate issued under section 29 of the Act authorising him to practise at the Malayan Bar.
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With respect we do not agree with this ruling, because there is nothing in section 3 to say that he must be in possession of such a certificate. In fact Mr Param Kumaraswamy conceded that Mr. Reddy is an advocate and solicitor under section 3. Under this section an advocate and solicitors is defined as:

an advocate and solicitor of the High Court admitted and enrolled under this Act or under any written law prior to the coming into operation of this Act.

This section does not say that to be an advocate and solicitor one must have a practising certificate. In our judgment Mr. Reddy is an advocate and solicitor within the Act although he has no practising certificate under the Act. As long as he has been 'admitted and enrolled' under the Act or any previous written law, he is an advocate and solicitor within the meaning of the Act. A practising certificate is not a requirement of section 3, but of section 29, which has nothing to do with the definition. The learned Judges were therefore in error

Applying that passage and indeed the whole of the learned Lord President's reasoning to the facts of the present instance we find the respondent to have satisfied the requirements of s. 13(1) of the Act. Indeed we are confident in saying that the present case is indistinguishable from *Samantha Murthi v. Attorney General Malaysia & Ors* (*supra*).

Our attention was also drawn to another decision of the Federal Court in *Malaysian Bar v. Mutang Tagal* [1985] 1 MLJ 231. The facts of that case are readily distinguishable from the present. In *Mutang Tagal* (*ibid*) the pupil master was not admitted and enrolled as an advocate and solicitor of the High Court of Malaya. That accounts for the decision in that case.

Learned counsel for the appellant has addressed and argued the other issues dealt with by the learned judge and some of the observations made by him in his judgment. He has criticised these. He has asked us to state our views upon these matters. He must forgive us if we decline to do so. They are wholly irrelevant and not *res integra* in the present appeal. Any view we express about them will be wholly gratuitous and of no jurisprudential value.

For the reasons already given this appeal must fail. We might add that after hearing the able argument of learned counsel for the appellant, we found it unnecessary to call upon the respondent who appears in person before us to make a reply. Nevertheless we would thank Tuan Haji Sulaiman Abdullah for the clarity of his argument and the citation of relevant authority and say that without his assistance this *ex tempore* judgment would not have been possible.